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File No. O Trusts 152

Legal Department

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XXI/2716

Subject:—

Opinions under the Indian Trusts Act. 1882

R.10/E

File No. O Trusts 152

[redacted]

[redacted] Legal Department /File No. G. Trusts./52

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		Opinions under the Indian Trusts Act, 1882.	
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2.	[redacted]	Whether the Saurashtri Devasthanam Act, 1952 can be construed to be still in force.	3
3.	[redacted]	Whether the present position of the A.G. holding shares on behalf of Govt, 1) continues and whether it is necessary to appoint an officer of the State Govt for hold the shares as its representative	5
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[redacted]

27/6/2016. 26/6

Legal Department

Clause 2 of the Trust Deed dated 19th June 1945 sets out the objects of the the Trust. It authorises the trustees to apply the trust fund or such portion or portions thereof or the income thereof of such portion or portions of the income as they in their absolute discretion think fit and proper for any one or more of the objects therein specified. The object set out in sub-clause(g) is granting aid to, promoting, establishing, supporting and maintaining institutions for the promotion of science, literature and fine arts, diffusion of useful knowledge and also for erecting, establishing, equipping and maintaining schools, colleges, hostels, laboratories, polytechnic institutes and industrial homes. Clause 15 provides that the trustees may join, co-operate and amalgamate the trust or any portion thereof with any trust or institution having allied or kindred objects upon such terms as they in their absolute discretion think fit and proper.

2. It will thus be clear that under the aforesaid provisions the trustees have full authority to hand over any part of the trust fund to Government for the purpose of establishing a music university as proposed. E.D. should settle the terms and conditions on which such donations should be accepted and pass a resolution to that effect. Such resolution may provide for the establishment of a statutory academy for the purpose. It would no doubt take some time before an Act is passed. But in the meanwhile if the Trustees agree, there is no objection to pass a resolution, and on the part of the trustees there should also be no objection to hand over the donations to Government.

Sd/-
16-1

Additional Secretary to Government

U.R. to E.D. No. 701 dated 17th January 1952.

H.R.D.
13-6-56

LEGAL DEPARTMENT.

The Baroda Public Institutions Act and the Devasthan Rules, 1912, of the Jamkhandi State as amended by the Jamkhandi Act of 1948 are among the Acts mentioned in Schedule A to the Bombay Public Trusts Act, 1950 The Sawantwadi Devasthan Act, 1932, has not been mentioned in that Schedule A. Consequently, it appears that on the merger of the Sawantwadi State in the Bombay State the Sawantwadi Devasthan Act, 1932, ceased to be in force in that area. However, the essential features of the Sawantwadi Devasthan Act as stated in the Revenue Department's note at page 55 are also the essential features of the general law governing the religious trusts. Consequently, even assuming that the Sawantwadi Devasthan Act has ceased to be in force, the trusts governed by that Act would be governed by the general principles of law, the essential features of which would be similar to those of the Sawantwadi Devasthan Act. There appears, therefore, no objection to continue the management by the State of these Devasthan trusts in the merged Sawantwadi State area until the Bombay Public Trusts Act, 1950 is brought into force.

M.R.D.
13-6-56
C.4

Sd/-
19-1

Additional Secretary to Government.

U.R. to R.D. No. 836, dated, the 19th January 1952.

It appears from these papers and particularly from the R.L.A.'s opinion No. 5483, dated the 30th June 1938 that the shares of the Imperial Bank of India inquestion were conveyed to the East India Company perpetually in trust for the benefit of the Sir.J.J.Parsee Benevolent Institution in pursuance of a deed of settlement. On the assumption of the Government of India by the Crown, the Shares in question vested in the Secretary of State for India in Council and were registered in the name of the Secretary of State. After the passing of the Government of India Act, 1935, the shares were transferred under section 173 of the Act to the name of the Government of Bombay. After this transfer the Accountant General, Bombay, who acted as the representative of the Secretary of State for India in Council, continued to act, presumably with the consent of the Government of India , as the representative of the Government of Bombay, and in his letter of 23rd February 1938 informed the Government of Bombay that he would appoint a permanent proxy to attend the meetings of the shareholders of the Imperial Bank of India as authorised by Government. If, as presumed, the Government of India had given their consent to the appointment of the Accountant General as the representative of the Government of Bombay in respect of the shares inquestion, there would be no constitutional objection to the Accountant General continuing to act as such representative. But, if the Accountat General does not wish to continue as such representative, and the Government of India Supports him, it would be necessary to relieve him of his responsibility as the representative of the Government of Bombay. The question, therefore, is one for the Government of Bombay to settle in consultation with the Government of India.

Sd/-
16-2

Remembrancer of Legal Affairs.

U.O. to E.D. No. 2982 ,dated the 16th February 1952.

M.R.D.
13-6-56
C.4

Office of the R.D.O.

The view expressed by the R.D.O. that as no conditions are attached to the donation for the use of the Central school Building, there would be no objection to utilising it for accommodating standards IVth VII of the the Panna and Punnaman Madhyantha Primary School does not appear to be correct. As would be seen from the letter of the Kalvani Mandal to the Maharaja of Mar(PP.3h-62 of the Correspondence section post) the donation of Rs.24,000/-was offered by the people for the construction of a building to accommodate the English classes. The building is a trust property and if the proposal made by the R.D. is to be given effect to it would amount to diversion of the objects of the trust. Sanction of the Court will, therefore, be necessary to maketuch use.

Sd/-
1-2

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1633, dated the 1st February 1952.

R.R.D.
13-2-52
C.C.

Opinion of the B.L.A.

The proposal made in para 2 of the d.o. letter at page 3 ante relates to the administration of the "Bombay share of the Trust" and the "Rajasthan share of the Trust". As observed in the previous opinion since the whole fund is a public trust, it would not be possible for Government of Bombay or Rajasthan to divide the corpus of the fund. The proposal of the Rajasthan Government which proceeds on the assumption that the fund could be distributed between the States of Bombay and Rajasthan doesnot, therefore, appear to be legally feasible. The principles about division of the income or the corpus of the trust funds and that the association of the officers of each Government with their administration may be decided upon as they may form useful material in settling the scheme as proposed in the B.L.A.'s opinion.

Sd/-
10-7
Remembrancer of Legal Affairs

U.R. to P.A. S.D. No. 11420, dated the 10th July 1952.

M.R.D.-
13-6-56
C.4

Legal Department
D.I.No. 4015 dt/ 29-6-32.

submitted.

A fund has been raised by the villagers in the Bombay State, by voluntarily setting aside some fields out of their holdings, and the produce from such fields were credited to this fund after payment of the land revenue. This income was utilised for charitable purposes.

The Collector of Kaira in his report dated 27-6-32 states that this fund was wholly created with public contributions and and as such falls under category(iii)of the Government Circular No. 9696/49 dated 11-8-50

The R.D. has proposed in these papers that as it is not necessary to continue the management of the fund with Govt. it should be disposed of in accordance with the provisions of the Bombay Public Trusts Act, 1950. The papers are referred to this Department for concurrence and remarks.

Sd/-
17-9

D.I.A. Sd/-

Sd/-
18-9

H.R.D.
13-6-33
C.A

U.R.to R.D. No. 15486/2 dt.20-9-32

Legal Department.

Power of alter objects of-

Under the trust deed in question the Rajasaheb of Sangli was appointed trustee and after merger of the State the powers of the trustee have duely devolved on the Bombay State Government. Under the trust deed the trustee is required to apply the net income of the trust towards the establishment and maintenance of a studentship to be awarded to a poor and deserving Konkanastha Brahmin student in Sangli High School as the trustee may in his discretion think fit and this studentship shall be called after the name of Vishwanath Nilkanth Joshi son of the said founder. The trustee is given full discretion to alter from time to time wholly or partially all or any of the purposes for which the income of the trust fund is under the above provisions directed and may apply for such other educationalindustrial or scientific purpose as the trustee shall think proper. "The Court does not interfere with the exercise bythe trustees of a discretionary power unless it is exercised corruptly." (See Warren vs. Clancy 1898(1)Ir. R.127; Tudor on Charity P.230). It is now proposed not to restrict the scholarship to poor and deserving Konkanastha Brahmin student of the Sangli High School but to throw it open to anystudent on merit irrespective of the community. This proposal apparently involves only a partial modification of the purpose of the trust and consequently, it would be within the discretion of Government to so alter it without the sanction of the Court.

Sd/-
L/10

Draftsman of Legal Affairs.

U.O.to S.D. No. 16[illegible] dated 6th October 1952.

M.R.D.
13-6-56
C.4

Office of the R.I.G.

Anglo Urdu [redacted] Poona, Transfer of.

Requisite trust deed as envisaged in the order of the District Court, Poona, dated the 20th June 1952 is being finalised by the Solicitor to Government in the Legal Department. That trust deed would have to incorporate the usual terms and conditions mentioned in G.R., R.& I.D. No. 8011, dated the 31st July 1948 on which it is proposed to transfer the school buildings and the cash balance to the Maharashtra Cosmopolitan Education Society. That being done no separate orders laying down the term and conditions of the trust as proposed in paragraph 4 of the Education Department office note, would be necessary necessary.

Sd/-
29-9

Remembrancer of Legal Affairs.

U.R. to E.D. No. 16138/A dated the 1st October 1952.

M.R.D.
13-6-56
C.4

Office of the R.L.A.

The effect of rule 10(a) and (b) of the revised Scheme is that the unspent balances of the fund cannot be added to the corpus. However, that rule can be modified by Government with the consent of the donor Shri S.B.Dhamle providing for such accretion to the corpus(See rule 12).

Sd/D
1-11

Secretariat of Legal Affairs.

U.R. to R.D. No. 18274/A, dated the 2nd November 1952.

R.R.D.
13-6-56
C.4